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Twin Cty Grocers Inc v. Food Circus

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THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-1116

TWIN COUNTY GROCERS, INC.;
TWINCO SERVICES, INC.,

Appellants

v.

FOOD CIRCUS SUPERMARKETS, INC.; JOSEPH AZZOLINA, SR.; LOUIS
SCADUTO; GRACE SCADUTO; FOOD KING INC; V&V INC; RONALD
GINSBERG; MAYFOODS, INC; VICTOR LARACCA, L.J.V., Inc; WILLIAM
MICHAS; FRANCIS MARKETS, LTD; NEPTUNE CITY LIQUORS, Inc; DONALD P.
NORKUS; GERARD K. NORKUS; NORKUS ENTERPRISES, INC; FRANELEN INC;
HELEN PACZKOWSKI; STANLEY PACZKOWSKI; HARP MARKETING CORP;
JACK PYTLUK; MARTIN PYTLUK; RUTH PYTLUK; SIDNEY CHARLES
MARKETS, INC.; MICHAEL ZIMMERMAN; SIDNEY ZIMMERMAN; CHARLES
H. ZIMMERMAN; E. DICKERSON & SON, Inc; C. RONALD DICKERSON;
FOODTOWN; VINCENT LARACCA,
DIGIORGIO CORPORATION,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(D.C. Civil No. 99-cv-05135)
District Judge: The Honorable Garrett E. Brown, Jr.

ARGUED
October 29, 2002

(Filed : November 18, 2002)

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OPINION OF THE COURT

NYGAARD, Circuit Judge.

Appellants Twin County Grocers, Inc. and Twinco Services, Inc. appeal from an order of the District Court which granted summary judgment in favor of Appellee DiGiorgio Corp., the sole remaining defendant. Appellants allege as error the issues listed in paragraph I, taken from its brief. Because we conclude that the District Court did not err, we will affirm.

I.

The allegations of error asserted by Appellants are as follows:

* Honorable Paul R. Michel, Circuit Judge for the United States Court of Appeals for the Federal Circuit, sitting by designation.

1. The District Court erred by holding that the restrictive covenants were unenforceable against DiGiorgio.
2. The District Court erred by not ordering DiGiorgio to disgorge profits.
3. The District Court erred by holding that Twin was not injured by DiGiorgio's actions.
4. The District Court erred by holding that DiGiorgio had no duty to negotiate with Twin in good faith, or, alternatively, that that duty had not been breached.
5. The District Court erred by holding that DiGiorgio was not unjustly enriched.

II.

The facts and procedural history of this case are well known to the parties and the court, and it is not necessary that we restate them here. The court has heard oral argument on the issues presented to us in this appeal. The reasons why we write an opinion of the court are threefold: to instruct the District Court, to educate and inform the attorneys and parties, and to explain our decision. None of these reasons are presented here. We use a not-precedential opinion in cases such as this, in which a precedential opinion is rendered unnecessary because the opinion has no institutional or precedential value. *See* United States Court of Appeals for the Third Circuit, Internal Operating Procedure (I.O.P.) 5.3. Under the usual circumstances when we affirm by not-precedential opinion and judgment, we briefly set forth the reasons supporting the court's decision. In

this case, however, we have concluded that neither a full memorandum explanation nor a precedential opinion is indicated because of the very extensive and thorough opinion filed by Judge Garrett E. Brown, Jr. of the District Court. Judge Brown's opinion adequately explains and fully supports its order and refutes the Appellants' allegations of error. Hence, we believe it wholly unnecessary to further opine, or offer additional explanations and reasons to those given by the District Court, why we will affirm. It is a sufficient explanation to say that, essentially for the reasons given by the District Court in its opinion dated the 11th day of December, 2001, we will affirm.

III.

In sum, for the foregoing reasons, we will affirm the order of the District Court.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Richard L. Nygaard

Circuit Judge

